

UNIVERSAL FOOD CORPORATION, PETITIONER, VS. THE COURT OF APPEALS, MAGDALO V. FRANCISCO, SR., AND VICTORIANO V. FRANCISCO, RESPONDENTS.

G.R. No. L-29155. February 22, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

The petitioner Universal Food Corporation moves to reconsider our decision dated May 13, 1970; its motion is based on four grounds which we shall discuss in seriatim.

1. The petitioner contends that (a) under the terms of the Bill of Assignment, exh. A, the respondent Magdalo V. Francisco ceded and transferred to the petitioner not only the right to the use of the formula for Mafran sauce but also the formula itself, because this, allegedly, was the intention of the parties; (b) that on the basis of the entire evidence on record and as found by the trial court, the petitioner did not dismiss the respondent Francisco because he was, and still is, a member of the board of directors, a stockholder, and an officer of the petitioner corporation, and that as such, had actual knowledge of the resumption of production by the petitioner, but that despite such knowledge, he refused to report back for work notwithstanding the petitioner's call for him to do so; (c) that the private respondents are not entitled to rescind the Bill of Assignment; and (d) that the evidence on record shows that the respondent Francisco was the one not ready, willing and able to comply with his obligations under the Bill of Assignment, in the sense that he not only irregularly reported for work but also failed to assign, transfer and convey to the petitioner the formula for Mafran sauce, in violation of the said deed of conveyance.

There is no need to further belabor the foregoing matters raised by the petitioner since they have been amply discussed and then resolved on pages 7-13, 13-15, and 15-17 of our decision.

2. The petitioner next points to certain provisions in the Bill of Assignment, which, it asserts, are not sufficient by themselves to prove that the respondent Francisco ceded to the petitioner merely the use of the formula for Mafran sauce and not the formula itself. It specifically cites the paragraphs (a) dealing with the payment of a "royalty of two (2%) per centum of the annual profit" earned by petitioner to the respondent Francisco; (b) stating the appointment of the said respondent as chief chemist of the petitioner as "permanent in character," with absolute control and supervision over laboratory personnel in the preparation of the Mafran sauce; and (c) making the property rights to the said trademark and formula automatically reversible to the respondent Francisco should dissolution of the petitioner corporation take place. Standing by themselves, the foregoing provisions of the Bill of Assignment are perhaps not sufficient to prove that what was ceded by the respondent Francisco to the petitioner was merely the use of the formula for Mafran sauce and not the formula itself. We have, however, made it clear in our decision that it is the cumulative effect of (a) the foregoing circumstances, (b) the admission made by the petitioner of paragraph 3 of the respondents' complaint, (c) the factual milieu of the case, and (d) the application of the first sentence of art. 1378 of the New Civil Code, which led this Court to conclude that what was actually ceded and transferred was only the use of the Mafran sauce formula. The fact that the trademark

"Mafran" was duly registered in the name of the petitioner pursuant to the Bill of Assignment, standing by itself alone, to borrow the petitioner's language, is not sufficient proof that the respondent Francisco was supposedly obligated to transfer and cede to the petitioner the formula for Mafran sauce and not merely its use. For the said respondent allowed the petitioner to register the trademark for purposes merely of the "marketing of said project." (see pars. 3 respectively of the complaint and answer, cited on page 12 of our decision.)

3. The petitioner advances the view that the findings of fact made by the trial court which led it to rule against the rescission of the Bill of Assignment, should be respected and upheld by this Court, because to disregard them would constitute an unjustified departure from the well-settled rule in this jurisdiction that appellate courts should not interfere with the findings of fact of the trial court or with its appreciation of the weight and credibility of the testimony of the witnesses. Stated otherwise, the petitioner, in essence and more precisely, wants this Court to overturn the rule that the findings of fact arrived at by the Court of Appeals are not subject to review by the Supreme Court (*Uy vs. J.M. Tuason & Co., Inc.*, 31 SCRA 121 [1970]; *Roque vs. Buan*, 21 SCRA 642 [1967]). It is true that the foregoing rule admits of certain defined exceptions: "the findings of fact made by the Court of Appeals may be set aside: 1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; 3) where there is a grave abuse of discretion; 4) when the judgment is based on a misapprehension of facts; and 5) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee" (*Roque vs. Buan*, *supra*, and cases cited). The petitioner, however, has not demonstrated the applicability of any of the foregoing exceptions to the case at bar.

4. Finally, the petitioner maintains that, assuming that the respondent Francisco is entitled to his back salary, since he has formed another corporation styled "La Mer Industries, Inc." the principal purpose of which is to engage in the manufacture and sale of products similar to if not the same as the Mafran sauce being produced by the petitioner, and, during the period of the pendency of this case, practised his other profession as chiropractor, the total amount of his earnings from these sources, computed from the date of dismissal to the date of reinstatement, and should he decide not to return to work, computed from the date of dismissal to the date of finality of our judgment, should be deducted from the back salary accruing to him. We find this argument tenable.

In his pleading filed on January 29, 1971, the respondent Francisco manifested that he would no longer file a rejoinder to the petitioner's reply and supplementary reply dated December 14, 1970 and December 22, 1970, respectively, and that he was submitting to final resolution by this Court the pleadings already submitted. In effect, the respondent Francisco does not deny the petitioner's aforestated contention.

ACCORDINGLY, we hereby modify our decision of May 13, 1970 only to the extent that the total earnings of the respondent Magdalo V. Francisco, Sr. from whatever source during the period from the date of his dismissal up to the date of finality of our decision, shall be deducted from the total back salary that shall have accrued to the said respondent. The trial court shall receive pertinent evidence on the earnings adverted to, then make the necessary determination, and forthwith issue the proper writ of execution to enforce the final judgment in this case.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.
Concepcion, C.J., and Teehankee, J., took no part.

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